

Talking Points

Health Plan Liability Related to Tobacco

Isn't it a contradiction for BCBSF to support legislation that holds the tobacco industry totally accountable for wrongdoing while opposing legislation that creates new liability for health plans? No.....

Product Purpose

- Comparing liability of health plans and liability of the tobacco industry is like comparing apples and toxic waste — they are two *very* distinct issues.
- Health plans help people maintain their well-being and provide access to services that save lives and prevent disability. The tobacco industry, on the other hand, produces products — and encourages their use through advertising — that result in death and disability.
- Legislation that creates new liability for health plans will ultimately increase the cost of health care. This puts consumers at greater risk of not being able to afford health care coverage. Legislation that limits liability for the tobacco industry denies those already harmed by tobacco products the opportunity to pursue existing legal recourse.

Community Responsibility

- Recently released documents show the tobacco industry has deliberately suppressed and distorted information regarding the health effects of tobacco. They have:
 - ⇒ Misrepresented the addictive nature of nicotine;
 - ⇒ Manipulated the levels of nicotine in its products;
 - ⇒ Sought to addict children as well as adults to its products; and
 - ⇒ Prevented research and development of safer products.
- These activities have added hundreds of millions of dollars to the cost of health care. And health plans such as BCBSF have been paying for these increased costs due to smoking-related illnesses and the tobacco industry's improper conduct.
- Health plans are committed to promoting the health of their customers. We inform them of potential health risks and encourage them to adopt healthy behavior and lifestyles. And, we work to improve the quality of life for those customers with illnesses such as asthma, diabetes and congestive heart failure.
- Health plans are already held accountable for the benefits coverage they provide and for their business practices. Extensive statutory licensure requirements, regulations, voluntary accreditation standards, and consumer demands in a competitive marketplace bring a high-level of scrutiny to the health care industry.

Accountability for Past Conduct vs. Changing Future Policy

- The managed care proposals that seek to redefine the scope of medical responsibility would create a new responsibility for claims that might arise at some time in the future. In the case of the tobacco industry, proposed legislation would limit liability for past misconduct.
- Passing legislation that limits the liability of the tobacco industry for its past misconduct allows it to avoid accountability and responsibility for their deceptive practices — it sends a message that says it was “okay” for the tobacco industry to violate federal and state laws.
- Limiting the tobacco industry’s liability also denies those harmed by tobacco the opportunity to enforce claims that are clearly provided for under existing law.

American System of Justice

- The tobacco industry has conducted their business in violation of state and federal laws. Passing legislation that would grant them special protections — protections that have not been granted to any other industry — makes a mockery of the American system of justice.
- Health plans are subject to a broad range of civil sanctions and penalties if they do not comply with federal and state requirements. Furthermore, health plans would be fully liable in any civil lawsuit if they were to conduct their businesses the way the tobacco industry has — willfully committing fraud, conspiracy, breach of duty and unjust enrichment.

The Right Way to Go

- Supporting legislation that improves the public health of Americans and changes the behavior of the tobacco industry is the right and fair thing to do. Passing special protections will discourage the tobacco industry — and possibly others — from cleaning up their act. Holding them accountable, on the other hand, will:
 - ⇒ Help police an industry that is harming the American public;
 - ⇒ Maintain remedies to correct past wrongs; and
 - ⇒ Provide strong economic disincentives for any industry to arrogantly ignore the public health and drive up the cost of health care.
- Maintaining current medical malpractice liability rules will not deny anyone the opportunity to enforce past or future claims against any health care provider. And, it will avoid unnecessary increases in the cost of health care — increases that will restrict access and have a negative impact on public health.

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